

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LYNNE FREEMAN,

Plaintiff,

vs.

TRACY DEEBS-ELKENANEY P/K/A
TRACY WOLFF, et al.,

Defendants.

Case No.: 1:22-cv-02435-LLS-SN

DECLARATION OF CECE M. COLE

CeCe M. Cole declares as follows:

1. I am an associate with Cowan, DeBaets, Abrahams, & Sheppard LLP, attorneys for defendants Tracy Deebs-Elkenaney p/k/a Tracy Wolff, Entangled Publishing, LLC, Holtzbrinck Publishers, LLC d/b/a Macmillan, and Universal City Studios LLC in the above-captioned matter. I make this declaration in support of all Defendants' motion for summary judgment on the copyright claims and in opposition to Plaintiff Lynne Freeman's motion for summary judgment.

2. Attached hereto as Exhibit A is a true and correct copy of *Crave* by Tracy Wolff, which is also being provided in hard copy to the Court.

3. Attached hereto as Exhibit B is a true and correct copy of *Crush* by Tracy Wolff, which is also being provided in hard copy to the Court.

4. Attached hereto as Exhibit C is a true and correct copy of *Covet* by Tracy Wolff, which is also being provided in hard copy to the Court.

5. Attached hereto as Exhibit D is a true and correct copy of *Court* by Tracy Wolff, which is also being provided in hard copy to the Court.

6. Attached hereto as Exhibit E is a true and correct copy of a document produced by Plaintiff during discovery bearing Bates stamps LF03750-LF04352 (“*BMR 2011*”).

7. Attached hereto as Exhibit F is a true and correct copy of a document produced by Plaintiff during discovery bearing Bates stamps LF06904-LF07371 (“*BMR 2013*”).

8. Attached hereto as Exhibit G are true and correct excerpts of Tracy Wolff’s deposition transcript, which was taken on March 7, 2023 in connection with this action.

9. Attached hereto as Exhibit H are true and correct excerpts of Elizabeth Pelletier’s deposition transcript, which was taken on March 9, 2023 in connection with this action.

10. Attached hereto as Exhibit I are true and correct excerpts of Stacy Abram’s deposition transcript, which was taken on March 3, 2023 in connection with this action.

11. Attached hereto as Exhibit J are true and correct excerpts of the deposition transcript of Elizabeth Tzeto Macmillan’s Rule 30(b)(6) witness, which was taken on March 15, 2023 in connection with this action.

12. Attached hereto as Exhibit K are true and correct excerpts of the deposition of Cole Loveall as Universal’s Rule 30(b)(6) witness, which was taken on March 23, 2023 in connection with this action.

13. Attached hereto as Exhibit L are true and correct excerpts of Plaintiff’s deposition transcript, which was taken on March 24, 2023 in connection with this action.

14. Attached hereto as Exhibit M are true and correct excerpts of Trent Baer’s deposition transcript, which was taken on March 21, 2023 in connection with this action.

15. Plaintiff did not attach *BMR 2011* or *BMR 2013* bearing the Bates numbers identified in her January 20, 2023 letter to the Court (ECF No. 111) as exhibits to her summary

judgment declaration (“Freeman Decl.,” ECF No. 276). However, it appears that Exhibits 14 and 17 to the Freeman Declaration likely are, respectively, *BMR 2011* and *BMR 2013*.

16. Exhibits 15, 16, and 21 to the Freeman Declaration are undated versions of Plaintiff’s manuscript, each titled *Masqued*. These documents respectively bear the Bates ranges LF169398-505, LF268941-332, and LF169509-892. As shown in the attached Exhibit N, which is a true and correct spreadsheet listing the metadata for these documents, their metadata states that they were created in or after June 2021, likely in connection with document production in this case.

17. To determine the actual creation date of the documents included as Exhibits 15, 16, and 21 to the Freeman Declaration, I personally took the following steps:

- a. First, I consulted a spreadsheet that Plaintiff’s counsel provided to Defendants in December 2022, which contained a key listing the versions of Plaintiff’s manuscripts that were allegedly provided as deposit copies in connection with her copyright registrations and the Bates stamps of the corresponding documents (the “Registration Key”). Attached hereto as Exhibit O is a true and correct copy of the Registration Key.
- b. Second, I located the native versions of these exhibits using the Bates stamps Plaintiff listed in her Registration Key (the “Freeman Natives”).
- c. Third, using these two data sets (the three Freeman Declaration Exhibits and the Freeman Natives), I compared the word counts and file names as listed on the Registration Key. I also used our e-discovery platform Everlaw’s “exact duplicates” and “near duplicates” function to aid my process.

18. Based on the above process, I was able to determine that the manuscript attached as Freeman Ex. 15 was actually created on October 10, 2016. Attached hereto as Exhibit P is a true

and correct copy of the metadata associated with the native version of this document. I am personally familiar with this exhibit because as explained above, I matched up the file name of Freeman Declaration Ex. 15 to the Registration Key, located the native document on Everlaw, and exported the associated metadata.

19. I was also able to determine that the manuscript attached as Freeman Declaration Ex. 16 was actually created on July 20, 2014. Attached hereto as Exhibit Q is a true and correct copy of the metadata associated with the native version of this document. I am personally familiar with this exhibit because as explained above, I matched up the file name of Freeman Declaration Ex. 16 to the Registration Key, located the native document on Everlaw, and exported the associated metadata.

20. I was also able to determine that the manuscript attached as Freeman Ex. 21 was actually created on July 20, 2014. Attached hereto as Exhibit R is a true and correct copy of the metadata associated with the native version of this document. I am personally familiar with this exhibit because as explained above, I matched up the file name of Freeman Declaration Ex. 21 to the Registration Key, located the native document on Everlaw, and exported the associated metadata.

21. Defendants collectively produced 41,569 documents in this litigation, including numerous drafts of the Crave books and numerous communications sent while writing and/or editing the Crave books. Plaintiff first produced copies of her manuscript on August 2, 2022. I am personally familiar with the parties' document productions because I have been actively involved in discovery throughout this litigation and have personally reviewed the documents produced by the parties herein. I used Everlaw to total the number of documents produced by Defendants in this litigation.

22. Attached hereto as Exhibit S is a true and correct copy of a document produced by Tracy Wolff in discovery bearing Bates stamps WOLFF_0001776- WOLFF_0002199.

23. Attached hereto as Exhibit T is a true and correct copy of a document produced by Tracy Wolff in discovery bearing Bates stamps WOLFF_0002684- WOLFF_0002839.

24. Attached hereto as Exhibit U is a true and correct copy of a document produced by Tracy Wolff in discovery bearing Bates stamps WOLFF_0019959-WOLFF_0019998.

25. Attached hereto as Exhibit V is a true and correct copy of a document produced by Tracy Wolff in discovery bearing Bates stamps WOLFF_0006630-WOLFF_0006680.

26. Attached hereto as Exhibit W is a true and correct copy of a document produced by Tracy Wolff in discovery bearing Bates stamps WOLFF_0005407-WOLFF_0005410.

27. Attached hereto as Exhibit X is a true and correct copy of a document produced by Tracy Wolff in discovery bearing Bates stamps WOLFF_0102250-WOLFF_0102699.

28. Attached hereto as Exhibit Y is a true and correct copy of a document produced by Tracy Wolff in discovery bearing Bates stamps WOLFF_0042663-WOLFF_0042666.

29. Attached hereto as Exhibit Z is a true and correct copy of Defendants' expert Dr. Malcolm Coulthard's rebuttal report to Plaintiff's experts Drs. Chaski and Juola.

30. Attached hereto as Exhibit AA is a true and correct copy of Defendants' expert Emily Easton's opening report.

31. Attached hereto as Exhibit BB is a true and correct copy of Ms. Easton's rebuttal report to Plaintiff's expert Kathryn Reiss.

32. Attached hereto as Exhibit CC is a true and correct copy of the appendix to Ms. Easton's rebuttal report. The appendix contains examples of scenes claimed to be similar by Ms. Reiss, placed side by side. In some instances, scenes from Crave are included more than once so

that they can be viewed against allegedly similar scenes from both *BMR 2011* and *BMR 2013*.

Because Ms. Easton's appendix is a large file, it has been divided into 4 sub-exhibits.

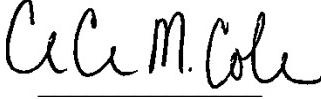
33. Attached hereto as Exhibit DD are true and correct excerpts of Dr. Juola's deposition transcript, which was taken on September 26, 2023 in connection with this action.

34. Attached hereto as Exhibit EE are true and correct excerpts of Dr. Chaski's deposition transcript, which was taken on September 28, 2023 in connection with this action.

35. Attached hereto collectively as Exhibit FF are true and correct copies of the full text of the passages cited in Plaintiff's chart at pages 28-29 of her summary judgment brief. Plaintiff did not include the red bolded text in her submission to the Court. Notably, for some of her alleged comparisons, Plaintiff relies on a July 2014 draft (Freeman Declaration Ex. 16) and October 2016 draft (Freeman Declaration Ex. 15) of *BMR*.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: December 22, 2023
New York, New York



CeCe M. Cole